IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1180 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVABHAI TEJABHAI JAVAR HARIJAN

Versus

STATE OF GUJ.

Appearance:

1. Criminal Appeal No. 1180 of 1993
MR G RAMAKRISHNAN for Petitioner No. 1
MR KG SHETH, Ld. APP Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant, Deva Teja Javar Harijan and his father, Teja Jeeva Javar Harijan were charged with the offence punishable under Section 302 read with 34 and 114 of IPC for causing the death of Devshi Jeevabhai. The appellant was also charged individually for the offence punishable under Section 302 for causing the death of Devshi Jeevabhai by giving blows with an iron pipe. They were also accused of causing injuries to witnesses Gouriben and Sajan Devshi. The learned Additional Sessions Judge, who tried the appellant in Sessions Case No.55 of 1992 convicted the appellant of the offence under Section 302 and sentenced him to life-imprisonment and fine of Rs.500/-, in default, R.I. for one month. He also convicted the appellant of the offence under Section 504 and sentenced him to R.I. for 5 days and fine of Rs.100/-, in default, R.I. for 7 days. He acquitted the father of the appellant, who was jointly charged with the appellant. They were also acquitted of the offence under Section 323.

2. There is no appeal against the acquittal of the father of the appellant under Section 302 and we are now concerned only with the appeal filed by the appellant, challenging his conviction under Section 302.

3. The incident in question occurred at about 8 O'clock on 5-5-1992, near the Otla of Ramdevpir Temple, Village Arablus, Taluka Lalpur, District Jamnagar. It was alleged that the appellant and his father assaulted Devshibhai with an iron pipe and a stick and caused injury, which proved to be fatal. It was also alleged that in the course of the incident the wife of the deceased, Gouriben and his son Sajan also received injuries.

4. The evidence of Dr.Satish Kalele (PW-5), who carried out the post-mortem examination shows that there were two external injuries in the body of the deceased, one on the left side of head (Temporo-occipital region) and another on the left upper eye-lid. There were seven internal injuries corresponding to the external injury No.1 and injury No.8 was related to external injury No.2. In his opinion, the cause of the death was shock due to head injury.

5. As there is no doubt that Devshibhai Jeeva

Harijan died of the injuries inflicted on him, the question is whether it was the appellant who caused two fatal injuries. The prosecution case rested mainly on the evidence of Gouriben (PW-1), the wife of the deceased, Karshan Bhoja (PW-2), who was also a relative of the appellant and a neighbour and Sajan Devshi (PW-3), who is the son of the deceased.

6. Gouriben's evidence shows that while she was at home in the evening, her husband went to Ramdevpir Temple for performing pooja. The temple was at a distance of about 60 ft. Then she heard an uproar and she ran there. There she saw the appellant was armed with an iron pipe and his father was carrying a stick. The appellant Deva Teja Javar Harijan gave one blow with the iron pipe on the head of her husband and another on his temple. She intervened, but the father of the appellant gave her a stick blow on her head. Her son, Sajan Devshi also came running and his hand was in plaster and the appellant gave a blow on his hand. Karshan Bhoja also came running there. Her husband had become unconscious. They took him home and from there they took him in a Cart to Changa, from where he was carried in a truck and taken to the Government Hospital, Jamnagar where he was admitted. He was still unconscious. The Police recorded her complaint in the hospital. Her husband died at about 2 O'clock in the night. The witness was subjected to lengthy cross-examination, but nothing has been brought out to shake her version.

7. Karshan Bhoja, who was the neighbour of the deceased and who came running at the time of the incident, has stated that there was a scuffle between the appellant and the deceased and thereafter the appellant had given blows to the deceased with iron pipe. Sajan Devshi (PW-3), the son of the deceased, also stated that it was the appellant who had given the fatal blows. There is also another witness, Jayben Bhimabhai (PW-4), who has also stated that she ran to the temple on hearing the uproar and saw the appellant giving blows to the deceased.

8. The evidence of these witnesses has remained unshaken in the corss-examination. Their evidence is consistent. The evidence of Dr.Satish Kalele also shows that each of the two injuries by itself was sufficient to cause death in the ordinary course of nature and that the injuries could have been caused by the iron pipe, which was shown to him. Thus, in view of this evidence, there is no escape from the conclusion that it was the appellant, who gave the blows on the head and temple of

the deceased and that the injuries caused by him proved to be fatal.

9. However, the learned Advocate for the appellant submitted that in the circumstances of the case, the offence would be punishable under Section 304 Part-I. There is considerable substance in this contention. The witness Gouriben has stated that she heard an uproar and she rushed to the temple. Though she has stated that she had sustained an injury, the medical evidence shows that she had not suffered any external injury. Karshan Bhoja (PW-2) has stated that there was a scuffle between the appellant and the deceased. The appellant in his further statement has stated that while he was performing pooja, Devshibhai Jeevabhai Harijan had given a stick blow on his head. The evidence of Dr.Arvindbhai, who was the Medical Officer at Government Hospital, Jamnagar shows that when he examined Deva Teja on 7-10-1992 he found a swelling on his parietal region and also bruises on the left shoulder. Thus, the prosecution evidence indicate that there was a scuffle between the appellant and the deceased and that there was an uproar. Blows were exchanged in which the appellant also sustained an injury on his head. This goes to show that there must have been a sudden quarrel which led to the unfortunate incident. In the circumstances, in our opinion, the appellant will be guilty of the offence under Section 304 Part-I. We, therefore, allow the appeal partly and set aside the conviction of the appellant under Section 302 and convict him under Section 304 Part-I and sentence him to suffer R.I. for ten years and to pay the fine of Rs.500/-, in default, to suffer R.I. for one month. The conviction under Section 504 is set aside.

27-3-2002 (M.C. Patel, J.)

(A.L. Dave, J.)

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